

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
SOUTHERN DIVISION

TROUT POINT LODGE, LIMITED,  
VAUGHN PERRET AND CHARLES LEARY

PLAINTIFFS

VS.

CIVIL ACTION NO. 1:12CV90

DOUG K. HANDSHOE

DEFENDANT

**TRANSCRIPT OF HEARING ON MOTION FOR CONTEMPT**

BEFORE THE HONORABLE LOUIS GUIROLA  
UNITED STATES DISTRICT JUDGE

JULY 27, 2017  
GULFPORT, MISSISSIPPI

APPEARANCES:

FOR THE DEFENDANT:

G. GERALD CRUTHIRD, ESQUIRE  
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1           **THE COURT:** All right. Madam clerk, I believe we  
2 have a civil matter scheduled this afternoon -- this morning.  
3 Would you please call the case.

4           **THE CLERK:** Civil Case Number 1:12cv90, Trout Point  
5 Lodge, Limited, et al versus Doug K. Handshoe set for a hearing  
6 on Motion for Contempt.

7           **MR. CRUTHIRD:** Your Honor, Gerald Cruthird appearing  
8 for Douglas Handshoe.

9           **THE COURT:** Counsel for the defendant, Mr. Handshoe.  
10 Is Mr. Handshoe here today?

11           **MR. CRUTHIRD:** Yes, sir, he is, and his wife.

12           **THE COURT:** All right. Would they like to sit with  
13 you at counsel table? I would invite them to do so if they  
14 wish.

15           **MR. CRUTHIRD:** Thank you, Your Honor.

16           **THE COURT:** What says the plaintiff, Trout Point  
17 Lodge, Limited? Are they here? Is anyone here on their  
18 behalf?

19 All right. Mr. Cruthird, it is apparent that no one is  
20 here on behalf of Trout Point Lodge, Limited or the additional  
21 plaintiffs, Mr. Perret and Mr. Leary. It may be -- let me ask  
22 you this. Teri, can you hear him from counsel table over  
23 there? It might be better if you would go to the lectern,  
24 Mr. Cruthird.

25           **MR. CRUTHIRD:** Thank you, Your Honor.

1           **THE COURT:** I am familiar with and I've read your  
2 motion, as well as your memorandum in support of that motion in  
3 which you seek to hold these plaintiffs in contempt for their  
4 failure to abide by an order of the Court which required them  
5 to appear for examination by a judgment debtor. My  
6 understanding in reading your motion was that you served Trout  
7 Point Lodge, Limited. Were you able to actually -- and of  
8 course, it does me no good to hold Trout Point Lodge, Limited  
9 in contempt. I have no real power in that regard, but were you  
10 able to serve Mr. Perret or Mr. Leary?

11           **MR. CRUTHIRD:** Yes, sir. I'm not sure where the  
12 microphone is right here.

13           **THE COURT:** It is right in front of you.

14           **MR. CRUTHIRD:** Okay. Yes, sir, Your Honor, they were  
15 both served -- if Mr. Handshoe will hand me -- I believe  
16 sometime in June but more than the time period the Court  
17 required prior to this hearing.

18           **THE COURT:** How was that service effectuated?

19           **MR. CRUTHIRD:** Personal service. Let's see, Your  
20 Honor. Well, it appears that this constable served an agent  
21 for the defendants, manager of their lodge. This lodge is in  
22 some remote area in I believe Nova Scotia, and it is locked  
23 part of the year, but this gentleman was able to make entry,  
24 and his return indicates that he served Sophia Gruber, manager  
25 of reception of that organization of Trout Point Lodge, Ltd.

1           **THE COURT:** So what you are telling me is that a  
2 process server actually went to Nova Scotia?

3           **MR. CRUTHIRD:** Yes, sir.

4           **THE COURT:** And rather than serving the individual  
5 plaintiffs in this case served a person who was present at the  
6 Trout Point Lodge there in Nova Scotia?

7           **MR. CRUTHIRD:** And represented herself to be an agent  
8 or an employee.

9           **THE COURT:** All right.

10          **MR. CRUTHIRD:** Your Honor, these respondents have  
11 been active in the Mississippi state courts, as well as federal  
12 court. I can go through the history, but they have been very  
13 active. There's a myriad of suits that they filed, and they  
14 filed some suits in Canada. So while taking advantage of  
15 Mississippi law and also the United States law, when  
16 convenient, they retreat to Canada and hide behind their law.

17          **THE COURT:** Well, let me ask you this, Mr. Cruthird,  
18 and I'm not unsympathetic to the plight that you and your  
19 client face with individuals that do not live in or do a lot of  
20 business here in the states. What is it that you want me to do  
21 that will accomplish some goal?

22          **MR. CRUTHIRD:** All right, Your Honor. We are  
23 prepared to assert two suggestions for sanctions. The one that  
24 was discussed with Your Honor and the Court I think back at the  
25 earlier date, last date this matter was before the Court, about

1 an attachment to the body, we don't believe that that probably  
2 would be legal in Canada. So we came prepared with a couple of  
3 other suggestions.

4 **THE COURT:** All right.

5 **MR. CRUTHIRD:** Without going -- I'm sure Your Honor  
6 is well aware of your well written, well reasoned opinion you  
7 rendered in I think the fall of 2012, which was upheld in an  
8 appeal by these defendants or these judgment debtors to the  
9 Fifth Circuit in another lengthy opinion.

10 At some point after you rendered your opinion, one of  
11 these suits was filed by them, and sadly, or regretfully, it  
12 contains subject matter that really should have been collateral  
13 estoppel or res judicata should have applied, but Mr. Handshoe,  
14 in trying to deal with the suit up there, was found to have  
15 submitted to personal jurisdiction and a judgment was rendered  
16 in December of 2014. And then ever since then, they have been  
17 trying to enforce that down here through a -- commenced with an  
18 initial filing in Hancock County Circuit Court to enforce a  
19 foreign judgment, and then that was dismissed by Circuit Court  
20 Judge Lisa Dodson for their failure to comply with the  
21 statutory requirements, with affidavit, et cetera. And then it  
22 was refiled. And after argument, Judge Schmidt, Christopher  
23 Schmidt of this circuit court district here on the coast -- I'm  
24 not sure whether it's the seventh district, eighth district, or  
25 one of them -- but anyway, he rendered an order in early

1 January of this year to enforce the foreign judgment. And we  
2 have had court action in that case wherein we asserted a  
3 defective writ of execution was sought to be executed upon or  
4 levied upon and sold. So that is still an ongoing proceeding  
5 in which these very individuals are seeking to avail themselves  
6 of the Mississippi laws. And we would suggest first that --

7 **THE COURT:** Could you not -- if they are seeking to  
8 enforce a judgment against Mr. Handshoe, could you not seek a  
9 counterclaim or a cross-claim against that company in that  
10 state court action?

11 **MR. CRUTHIRD:** Well, we are past that because after  
12 he, unfortunately, as Judge Schmidt found, submitted to  
13 personal jurisdiction, withdrew, and they took a default  
14 judgment. And again, regretfully, sadly, it pretty much  
15 contained the subject matter that your case involved, this case  
16 involved. But anyway, we are on the collection end, and what  
17 we would like to request the Court to do would be to enjoin  
18 these three judgment debtors from further collection action,  
19 and therefore their attorneys, until they make themselves  
20 available or compelled to submit themselves to this Court's  
21 jurisdiction on the previously ordered judgment debtor  
22 examination. That's our first suggestion.

23 **THE COURT:** So you would ask for this Court to enter  
24 an injunction against these parties, that's Trout Point Lodge,  
25 Vaughn Perret and Charles Leary, to enjoin them from making any

1 efforts to collect their foreign judgment against your client  
2 until they have responded to this request for the examination  
3 of a judgment debtor?

4 **MR. CRUTHIRD:** Yes, sir. Yes, Your Honor.

5 **THE COURT:** What is your next suggestion?

6 **MR. CRUTHIRD:** Well, the other suggestion or  
7 alternative would be for this Court to order a writ of  
8 execution from the clerk of this court to be issued against the  
9 proceeds, if any, that are derived from the enforcement of that  
10 foreign judgment in state court. It's a Hancock County  
11 judgment that is now in Stone County because that's where Mr.  
12 and Mrs. Handshoe reside. It's a personal judgment against  
13 them.

14 I mean, our preference is the first one because that would  
15 be more coercive potentially to persuade them to come into this  
16 court, come into this jurisdiction, and submit themselves to  
17 the examination that you had ordered basically for last fall  
18 and then again for today. But that other alternative exists  
19 for the Court's consideration.

20 **THE COURT:** All right. Now, I'm trying to keep my  
21 head wrapped around this, if I can.

22 **MR. CRUTHIRD:** Yes, sir.

23 **THE COURT:** There is in existence now a judgment by  
24 these plaintiffs against your client in the state court?

25 **MR. CRUTHIRD:** That is correct, Your Honor.

1           **THE COURT:** It is in the form of a default judgment?

2           **MR. CRUTHIRD:** That is correct, Your Honor.

3           **THE COURT:** Did you make any effort to set that  
4 default judgment aside?

5           **MR. CRUTHIRD:** We fully contested its enforcement  
6 under Mississippi's enforcement procedure of a foreign  
7 judgment, and the -- while I still believe that the argument  
8 about jurisdiction -- I mean subject matter jurisdiction had  
9 already been ruled upon by Your Honor in this convoluted case  
10 that you tried and rendered your decision on and was affirmed  
11 with the Fifth Circuit, the state court judge, the Honorable  
12 Judge Schmidt, found that he had submitted to personal  
13 jurisdiction.

14           **THE COURT:** All right. Well, even though he may have  
15 submitted to personal jurisdiction, a default judgment was  
16 entered against your client. My recollection even under state  
17 law is that default judgments are very easy to set aside and  
18 should be set aside with great deference in the event that  
19 there is a legitimate defense, and it seems to me that you may  
20 have those. Did you make any effort to set aside the default  
21 judgment? Would that not be one way to get back into state  
22 court?

23           **MR. CRUTHIRD:** The default was in Canada. Now, Your  
24 Honor --

25           **THE COURT:** The default was in Canada?



1           **MR. CRUTHIRD:** Yes, sir.

2           **THE COURT:** Then -- well, then, I must be mistaken,  
3 or I'm misinformed. There was no separate state action here in  
4 Mississippi?

5           **MR. CRUTHIRD:** No, sir. Now, there are civil  
6 actions, you know, that have been pending, or have been  
7 pending, and I know Your Honor handles thousands of cases. At  
8 one point Mr. Handshoe did try to remove the enforcement of the  
9 foreign judgment back to you, or really twice. But his counsel  
10 that had represented him so ably in the trial before you and in  
11 the Fifth Circuit appeal and all has been sued by these  
12 defendants, judgment debtor defendants, and he did not assist  
13 Mr. Handshoe in the removal attempts that you ruled against him  
14 on.

15           Well, again, falling back to our suggestion that this  
16 would be an ample sanction because it wouldn't be final. It  
17 just would be injunctive relief until such time that they  
18 decide they are going to come down here and litigate or  
19 participate.

20           **THE COURT:** I'm uncomfortable with that, and let me  
21 tell you why, because, in essence, I would be enjoining -- the  
22 federal court would be enjoining the parties from taking action  
23 in a state action over which I have no real control, that is,  
24 the Stone County action. And it may very well exceed my  
25 authority. In other words, you could ask for the same relief

1 in the state court, that they be enjoined in the state court  
2 from enforcement.

3 This is, quite frankly, a Gordian Knot. I'm uncomfortable  
4 with your suggestion, but I think Mr. Handshoe is entitled to  
5 something. I'm struggling with what to give him. I don't want  
6 to give him an order which is unavailing and which does not  
7 produce some edible fruit, if you will. That's my dilemma  
8 here.

9 **MR. CRUTHIRD:** Well, I would submit that you do have  
10 jurisdiction. Both of those circuit court actions are within  
11 your district. I mean, they also -- we are not asking you to  
12 enjoin the honorable circuit judge. We are asking you to  
13 enjoin the non-cooperating litigants here. And I have no -- I  
14 really have no comparison in my four years of practice other  
15 than -- I mean, you may laugh at this. I have stopped justice  
16 court or county court litigants by having a chancellor or a  
17 circuit judge wrap up the litigation or wrap it up -- and I  
18 realize that we had a couple of bites at the apple with the  
19 removal that would have brought this back to you, but this  
20 wouldn't be a final sanction. It would just be a sanction just  
21 as any number of sanctions, like such as incarceration to  
22 coerce them into cooperating.

23 **THE COURT:** Yes, but that brings us back to the other  
24 dilemma that I have, and that is that these individuals have  
25 not been personally served. Quite frankly, they have been

1 served in a foreign country and through an agent, which may be  
2 insufficient.

3 All right. I'm inclined to do one of two things, and I  
4 don't want you to spend any more time or any more resources on  
5 this than you absolutely have to. Mr. Handshoe has a \$48,000  
6 judgment out there that he may or may not be able to collect.  
7 He was entitled to attorney's fees. Attorney's fees are what  
8 he got in the federal court. I'm inclined to either give you  
9 an opportunity to further brief my authority as a sanction to  
10 enjoin these defendants from further collection proceedings,  
11 and within that additional briefing to discuss whether or not  
12 the Court -- or whether or not these parties have been properly  
13 served through an agent in a foreign country. Or my other  
14 inclination, frankly, is to go ahead and provide you with an  
15 order in which the Court will order these defendants to show  
16 cause of why they have not appeared here today at this hearing  
17 and give you another opportunity to get them served personally.  
18 In other words, I'm looking for you to give me -- give me  
19 some --

20 **MR. CRUTHIRD:** Perhaps Mr. Handshoe can go up there  
21 and personally deliver the agent to serve them.

22 **THE COURT:** Well, the agent, I don't think that is a  
23 problem. An agent --

24 **MR. CRUTHIRD:** I meant a process server. I'm sorry.

25 **THE COURT:** Well, another question is, would we have

1 the authority to go into a foreign country and serve an  
2 individual with a -- I frankly am at a loss here.

3 **MR. CRUTHIRD:** I believe we would take the second  
4 alternative, Your Honor, if we have a choice, to go back and  
5 try to serve them personally and brief it.

6 **THE COURT:** All right. Why don't you talk that over  
7 with Mr. Handshoe. You know, there comes a time when matters  
8 that we take up -- and I'm aware that Mr. Handshoe has been  
9 wronged and is entitled to recover his attorney's fees. But at  
10 some point, we reach a level of diminishing return, maybe not  
11 even diminishing return but no return at all, and we start  
12 going into the red.

13 **MR. CRUTHIRD:** Yes, sir.

14 **THE COURT:** But, of course, that's not a decision  
15 that's up to me. That's more of a practical decision, not  
16 necessarily a legal decision. It's one that Mr. Handshoe  
17 himself must struggle with in his own heart. Why don't you  
18 talk that over with your client and then let me know what you  
19 want to do, and I will do the best that I can with my  
20 limited -- rumors of my authority have been greatly  
21 exaggerated, and I will do what I can within the limits of my  
22 authority.

23 **MR. CRUTHIRD:** I understand, Your Honor. I can come  
24 back and inform the clerk or whoever here shortly, if that's  
25 acceptable.

1           **THE COURT:** That would be perfectly fine. I don't  
2 want to discommode Mr. Handshoe or waste any of his time if I  
3 don't absolutely -- well, there's never a good reason to waste  
4 anyone's time, but I would like to see something productive  
5 done here and not simply spinning our wheels in the mud. All  
6 right?

7           **MR. CRUTHIRD:** Thank you, Your Honor.

8           **THE COURT:** Thank you and I thank your clients. We  
9 will recess this hearing at this time, and I will wait to hear  
10 from you.

11          **MR. CRUTHIRD:** Thank you.

12          **THE COURT:** Thank you. You may be excused.

13                               (HEARING CONCLUDED)

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3 CERTIFICATE OF COURT REPORTER  
4

5 I, Teri B. Norton, RMR, FCRR, RDR, Official Court  
6 Reporter for the United States District Court for the Southern  
7 District of Mississippi, appointed pursuant to the provisions  
8 of Title 28, United States Code, Section 753, do hereby certify  
9 that the foregoing is a correct transcript of the proceedings  
10 reported by me using the stenotype reporting method in  
11 conjunction with computer-aided transcription, and that same is  
12 a true and correct transcript to the best of my ability and  
13 understanding.

14 I further certify that the transcript fees and format  
15 comply with those prescribed by the Court and the Judicial  
16 Conference of the United States.

17  
18  
19  
20 *S/ Teri B. Norton*  
21 TERI B. NORTON, RMR, FCRR, RDR  
22 OFFICIAL COURT REPORTER  
23  
24  
25